IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

AS.No. 379 of 1992()

AGAINST THE ORDER DATED 11/12/1991 IN O S 457/83 IN IA.621/1985 of PRINCIPAL SUB COURT, PALAKKAD

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APPELLANT/RESPONDENT/DEFENDANT

ARAVINDAKSHAN S/O KITTA
RESIDING AT KANNADI AMSOM
PALAKKAD TALUK

BY ADV. SRI.V.CHITAMBARESH
SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENT/ DEFENDANT

SIVADASAN S/O KITTA, RESIDING AT
MENONPARA, ELAPPULLY VILLAGE
CHITTUR TALUK , PALAKKAD DISTRICT

BY ADV. SRI.T.K.CHINNAN
SRI.MOHAMMED RAFIQ

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 19-06-2007 ALONG WITH RFA NO. 396 OF 2004 THE COURT ON 19/06/2007 DELIVERED THE FOLLOWING:

A.S. 379 OF 1992

ORDER INC.M.P NO. 4928 OF 1992 IN A.S. NO. 379 OF 1992

DISMISSED

19-06-2007 **SD/- K.PADMANABHAN NAIR, JUDGE**

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K.PADMANABHAN NAIR . J.

A.S. No. 379 of 1992

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R.F.A. No.396 of 2004

Dated this the 19th day of June 2007

JUDGMENT

These two appeals arise from the final decree passed in O.S No. 457 of 1983 on the file of the Court of the Subordinate Judge, Palakkad. R.F.A 396/2004 was originally filed as A.S. 100/92 before the District Court Palakkad which was subsequently withdrawn to this court to be heard along with A.S 379/1992 The parties will be referred to as arrayed in the suit.

2. The plaintiff filed the suit for partition of his one half over three items of properties. Item 1 &2 are two paddy fields. Item No. 3 is a garden land. When the suit came up for trial both sides agreed that the suit may be decreed as prayed for. The court below passed a preliminary decree for partition of the suit properties into two equal halves allotting one such share to the plaintiff. It was further held that the plaintiff is entitled to get share of profits, the quantum of which was left open to be decided in the final decree.

3. The plaintiff filed an application for passing final decree. A commission was deputed to effect partition of the properties into two shares and also for assessing the mesne profits The 3rd item was sold in auction with the permission of the court. The plaintiff was the successful bidder of that property. The Commissioner divided items No. 1 and 2 into

two equal halves and allotted one such share to the plaintiff. Item No.1 is a double crop paddy field having an extent of 1 acre and 25 cents Item No. 2 is a single crop paddy field having an area of 95 cents. The Commissioner calculated the average yield per crop as 14 fold and fixed the value of paddy at the rate of Rs. 10 per para totalling to 16,240/- From that amount he deducted an amount of Rs. 6384 as expenses and fixed an amount of Rs, 4,930/- as mesne profits till February 1987. The trial court accepted the report of the Commissioner and passed the final decree.

4. Challenging the quantum of mesne profits assessed in the final decree the defendant filed A.S. 379/1992 before this Court. The plaintiff filed A.S. 100/92 before the District Court contending that he is entitled to get the share of profit not for three years but till the date of recovery .

5. Sri.V.Chithambaresh, counsel for the appellant in A.S. 379/1992 has argued that the mesne profits fixed is highly excessive and without any basis. It is argued that the commissioner fixed 14 fold for two season. It is argued that actually in the second crop yield will be much less than the yield which a cultivator will get for the first crop. It is also argued that in Palakkad District the maximum yield taken for fixing compensation was 10 fold during the relevant period and the Commissioner went wrong in fixing 14 fold as the yield. The learned

counsel appearing for the plaintiff contended that the yield fixed is very low. It is argued that the price fixed was also very low It is pointed out that the defendant himself had admitted the actual price of paddy was much more than what was fixed by the Commissioner It is also argued that the defendant had admitted that he was cultivating Black gram and other seasonal crops in the property but the Commissioner did not assess the share of profits due to the plaintiff from such cultivation. This statement is refuted by the counsel for the defendant contending that the quantity of the paddy and its prices fixed were very high. It is argued that no seasonal crops were cultivated and as such the plaintiff is not entitled to get any share of profits of such crops. The learned counsel for the plaintiff has also argued that the court below went wrong in limiting the share of profits for a period of three years.

6. I shall deal with the question of the share of mesne profits first. The Court below followed the provisions contained in Order XX Rule 12 which provides that the mesne profits can be fixed only for three years. The Court below failed to note that though the plaintiff used the word mesne profits what was actually claimed was not mesne profits but the share of profits. For claiming share of profits there is no limitation The provisions of Order XX Rule 12 is not applicable to such cases. In **Appukkuttan Vs. Janardhanan (1990 (2) KLT 956).** a learned single Judge of this Court held that in a partition suit, a sharer is entitled to

claim his share of profit for more than three years after the decree So the Court below went wrong in limiting the share of profits for three years alone. The plaintiff is entitled to get the share of profits until the property allotted is delivered over to him. I am of the view that instead of remanding this matter for quantification of the share of profits from March 1987 till the recovery, the same can be relegated to the execution stage. The plaintiff can claim the share of profit due to him from March 1987 as and when he files a petition for execution of the decree passed in the suit. I make it clear that if the plaintiff makes an application for calculation of the share of profits the same shall be calculated by deputing a Commissioner and not based on Ext.C1 report. The share of profit assessed in Ext.C1 is confined to the period stated in that report alone. It is open to both sides to adduce evidence regarding the nature of crops cultivated in the field and the yield the plaintiff might have received from March 1987.

7. The commissioner had fixed 14 fold for three years from 1983. Considering all aspects of the matter and also taking into account that there may be variation of crops for the two seasons. I am of the view that the details given in Ext.C1 report can be relied on for fixing the share of profits for the period stated in Ext.C1 report with slight modification. The yield is re-fixed at 10 fold. All other figures given by the Commissioner are accepted as such. So the share of profit due to the plaintiff is re-fixed as follows

income from item No. 1
: 1000 x 1 ¼ x 7 = Rs.8,750/-
(1.25 acres of Double Wet crop land)

Income from item No.2
: 1000 x 95 x 3 = Rs. 2,850/-
(95 cents of single Wet crop land)

Total : 11,600
= = = =

Net profit after deducting the expenses : 11,600 - 6,380 = Rs. 5,220

Share of profit due to the plaintiff : Rs. 2,610/-

8. I make it clear that the yield is fixed at 10 fold only for the three year period in Ext.C1. report and for the remaining period the yield of the crops shall be ascertained by deputing a commissioner.

9. In the result both appeals are allowed in part. In R.F.A. 396/2004 it is held that the plaintiff is entitled to the share of profits not only for three years but till the date of recovery of the property. The share of profits due to the plaintiff from March 1987 will be decided in the execution proceedings. In A.S 379/1992 the share of profits due to the plaintiff from 1983 till 1987 is modified and fixed as above. In all other aspects the decree passed by the trial court is confirmed.

sd/-

K.PADMANABHAN NAIR,JUDGE

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